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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAYMOND ANTHONY JOAO

Appeal 2009-014774
Application 09/639,908
Technology Center 3600

Before: MURRIEL E. CRAWFORD, HUBERT C. LORIN, and JOSEPH
A. FISCHETTI, Administrative Patent Judges.

FISCHETTI, Administrative Patent Judge.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant seeks our review under 35 U.S.C. § 134 (2002) from the Examiner's final rejection of claims 42, 61-66, 68-79, 81-89 and 91-104.

We affirm.

THE CLAIMED INVENTION

Appellant claims an apparatus and method for providing financial information and/or investment information (Specification 1:19-21). Claim 42 is illustrative of the claimed subject matter:

42. An apparatus for providing financial information or investment information, comprising:

a receiver, wherein the receiver receives a request to provide a notification of a change in at least one factor and information regarding a correlation of the at least one factor with at least one of a stock, a bond, a security, securities, a portfolio of securities, a market instrument, an index instrument, a financial market, a market index, a mutual fund, a trust, a currency, currencies, a commodity, commodities, a foreign exchange rate, an interest rate, a utility service, a utility product, an energy service, an energy product, a telecommunication service, a telecommunication product, a bandwidth service, a bandwidth product, a debt product, a credit product, a credit derivative product, a derivative, an option, a future, a forward, a contract, and an account;

a processor, wherein the processor automatically detects a change in at least one factor upon an occurrence of a change in the at least one factor, and further wherein the processor processes the request and generates a notification message containing information regarding the change in the at least one factor along with information regarding a correlation of the at least one factor with at least one of a stock, a bond, a security, securities, a portfolio of securities, a market instrument, an index instrument, a financial market, a market index, a mutual fund, a trust, a currency, currencies, a commodity,

commodities, a foreign exchange rate, an interest rate, a utility service, a utility product, an energy service, an energy product, a telecommunication service, a telecommunication product, a bandwidth service, a bandwidth product, a debt product, a credit product, a credit derivative product, a derivative, an option, a future, a forward, a contract, and an account; and

a transmitter for transmitting the notification message over a communication network to a communication device associated with an individual, wherein the apparatus automatically initiates a communication link with the communication device, and further wherein the transmitter transmits the notification message over the communication network to the communication device, and further wherein the notification message is transmitted to the communication device in real-time.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Ray	US 6,018,722	Jan. 25, 2000
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REJECTIONS

The following rejections are before us for review.

The Examiner rejected claims 42, 61-66, 68-79, 81, 83-89 and 91-104 under 35 U.S.C. § 102(e) over Ray.

The Examiner rejected claim 82 under 35 U.S.C. § 103(a) over Ray and Official Notice.

ISSUES

Did the Examiner err in rejecting claim 42 under 35 U.S.C. § 102(e) over Ray as disclosing the apparatus automatically initiating a communication link and transmitting the notification message in real-time

since Ray discloses notifying customers via fax of investment recommendations?

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence.

1. We accept as our own the Examiner's findings as set forth at pages 5-11 of the Examiner's Answer of June 8, 2009.
2. Ray discloses a receiver that receives a request in that the "customer selects one of three levels of services regarding order notification and execution." (Col. 9 ll. 29-30).
3. Ray discloses that the customer may request to provide notification of a change through the "Expert Alert account provides customer notification of recommended transactions via fax modem 225, FIG. 2 ..." (Col. 9 ll. 35-38).
4. Ray discloses a processor that automatically detects a change in at least one factor upon an occurrence of a change in the at least one factor (price) for securities, in that "[e]ach day, or at such time interval determined by Base Station owner or in 'real time', prices are updated on the base station 425 to reflect the most recent price and volume of securities, thus providing the raw data necessary to perform statistical technical analysis." (Col. 6 ll. 40-45).
5. Ray discloses automatic generation of a notification message containing information regarding the change in the at least one factor (price) along with information regarding a correlation of the at least one factor (recommendation) with at least one of a security, stating, the "sell

transaction identifies quantity, price and description of the security held in the account ...” (Col. 7 ll. 42-44).

6. Ray discloses the content of recommendation notifications, in that “[e]ach security analyzed at this step is classified in one of five trading zones: (1) buy, (2) buy/hold, (3) hold, (4) sell/hold, and (5) sell.” (Col. 6 ll. 52-54).
7. Ray discloses automatic communication of notification, in that “[r]ecommended investments may also be forwarded to subscribing customers via fax modem if the customer so chooses.” (Col. 3 ll. 6-8).

ANALYSIS

Appellant argues with respect to each pending claim, that “Ray does not disclose or suggest many of the specifically recited features of [each claim] and, therefore, Ray does not disclose or suggest all of the specifically recited features ...” (Appeal Br. 35-138). The remainder of each argument is a full restatement of the claim language with the repeated assertion that “Ray does not disclose or suggest” each claim limitation (Appeal Br. 35-138).

Appellant’s arguments as presented in the Appeal Brief amount to no more than statements which merely point out what each claim recites. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. See, 37 C.F.R. § 41.37 (c)(1)(vii) (2004). As such, these statements will not be considered an argument for separate patentability of the claims.

To the extent that the argument is that the Examiner must find each and every element of a list of items prefixed by “at least one of”, we disagree. By the literal meaning of the claim requirements, the Examiner

need only find one of the listed elements when the claim calls for “at least one” of a list of claim elements, as is pervasive in the claims. Furthermore, the Examiner made findings that correlate specific disclosures made in Ray to claim language (Answer 5-11), which we accept as our own (FF 1). Specifically, we find Ray discloses a receiver that receives a request to provide a notification of a change in at least one factor (price) and information regarding correlation of the factor with a security (FF 2, 3), a processor that automatically detects a change in at least one factor upon an occurrence of a change in the at least one factor (FF 4), and generates a notification message containing information regarding the change in the at least one factor (FF 5) along with information regarding a correlation of the at least one factor with a security (FF 6), and a transmitter that automatically initiates a communication link via a fax modem which transmits a notification message in real-time (FF 3, 7), thus meeting the claim language.

Appellant further argues the “Examiner, at the very least, has failed to consider, and has failed to address, the limitations: ‘wherein the apparatus automatically initiates a communication link with the communication device, and further wherein the transmitter transmits the notification message over the communication network to the communication device, and further wherein the notification message is transmitted to the communication device in real-time’ ...” (Reply Br. 4). Essentially the same argument is set forth for the corresponding portions of claims 68, 73, 83, and 94 (Reply Br. 6-7, 8-9, 11, and 13).

We disagree with Appellant. The Examiner found that Ray discloses the cited claim limitation at Col. 3 ll. 4-35, which we find discloses that

recommendations “may also be forwarded to subscribing customers via fax modem if the customer so chooses.” (FF 7). Our review of Ray confirms that Ray’s system automatically initiates a communication link via a fax modem which transmits a notification message in real-time (FF 3), thus meeting the claim language. We therefore sustain the rejection of claim 42. For the same reasons, we sustain the rejections of claims 68, 73, 83, and 94. Appellant does not provide a substantive argument as to the separate patentability of claims 61-66 and 101 that depend from claim 42, claims 69-71 and 102 that depend from claim 68, claims 74-79, 81, and 103 that depend from claim 73, claims 84-89, 91-93 and 104 that depend from claim 83, or claims 95-100 that depend from claim 94. Thus claims 61-66, 69-71, 74-79, 81, 84-89, and 91-93, 95-104 fall with claims 42, 68, 73, 83, and 94. See, 37 C.F.R. § 41.37(c)(1)(vii)(2004).

We also affirm the rejection of dependent claim 82 since Appellant has not challenged such with any reasonable specificity.

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 42, 61-66, 68-79, 81, 83-89 and 91-104 under 35 U.S.C. § 102(e) over Ray.

The Examiner did not err in rejecting claim 82 under 35 U.S.C. § 103(a) over Ray.

DECISION

For the above reasons, the Examiner’s rejection of claims 42, 61-66, 68-79, 81-89 and 91-104 is AFFIRMED.

Appeal 2009-014774
Application 09/639,908

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

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